

DIRECTIVE

WELFARE-TO-WORK

Number: WD99-7

Date: August 12, 1999
69:141:va:2847

TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
WELFARE-TO-WORK 15 PERCENT SUBGRANTEES
DOL WELFARE-TO-WORK 25 PERCENT SUBGRANTEES
COUNTY WELFARE DEPARTMENT DIRECTORS
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
EDD EXECUTIVE STAFF
WORKFORCE DEVELOPMENT BRANCH STAFF

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive establishes the State's policy on the nondiscrimination and equal opportunity procedures for the Welfare-to-Work (WtW) Grant programs.

Scope:

This directive applies to Service Delivery Areas (SDA) and subgrantees of the WtW 15 Percent grant funds.

Effective Date:

This directive is effective on date of issue.

REFERENCES:

- Job Training Partnership Act (JTPA) Sections 164(g) and 167
- Title IV Part A of the Social Security Act Section 408(d)
- Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Title 20 Code of Federal Regulations (CFR) Sections 627.210, 627.420(h)(2)(ii), 627.420(h)(4)(i), and 627.475
- Title 20 CFR Sections 645.245 and 645.255
- Title 29 CFR Parts 31, 32, and 34
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975, as amended

- Americans with Disabilities Act of 1990
- JTPA Directive D97-26, Subject: Protocol and Guidelines for State Monitoring Reviews (June 23, 1998)
- JTPA Directive D98-7, Subject: Nondiscrimination and Equal Opportunity (September 21, 1998)
- JTPA Directive D98-19, Subject: Standards for PIC Oversight and Instructions for Substate Monitoring (June 8, 1999)

STATE-IMPOSED REQUIREMENTS:

This directive contains some state-imposed requirements. These requirements are indicated in ***bold, italic*** type.

FILING INSTRUCTIONS:

This directive finalizes Draft Directive WDD-8 issued for comment on June 28, 1999. Retain this directive until further notice.

BACKGROUND:

Title 20 CFR Section 645.255 contains the nondiscrimination protection provisions applicable to participants in the WtW Grant programs. Title 29 CFR Section 34.42 establishes the procedures under which JTPA grant recipients shall process complaints involving violations of the JTPA nondiscrimination and equal opportunity provisions. Since many WtW grant recipients will be Private Industry Councils (PIC) and other entities with experience operating the JTPA program, the Department of Labor has determined that, in order to avoid administrative burdens, such entities shall process WtW discrimination complaints under these procedures rather than require that they comply with two different sets of procedures. Furthermore, entities that have no previous experience operating the JTPA program must follow the same procedures. Therefore, the policy and procedures section of this directive is duplicative of the current JTPA Directive D98-7, *Nondiscrimination and Equal Opportunity*.

Individuals with questions or concerns about the requirements of these nondiscrimination laws should address their comments or concerns to the Directorate of Civil Rights (DCR), U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.

Any WtW participants alleging gender discrimination may file a complaint using the State's grievance procedures under the WtW Grant programs.

POLICY AND PROCEDURES:

Definition(s):

Recipient, taken from Title 29 CFR Part 34, means any entity to which federal financial assistance under any title of JTPA is extended, either directly or through the Governor, or through another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the JTPA-funded program or activity and the Governor.

Complaint, for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

Subgrantee means any agency, private or public, which receives WtW 15 Percent grant funds directly from the State to operate WtW programs.

General Provisions:

The State of California has three distinct procedures for the processing and filing of complaints. The procedures are categorized by the following types of complaints:

- Grievance (Noncriminal)
- Discrimination and Equal Opportunity (Noncriminal)
- Fraud, Waste, and Abuse (Criminal)

The term “complaint” is used interchangeably in JTPA when referring to all three procedures.

Title 29 CFR Section 34.33 requires that each Governor shall establish and adhere to a Methods of Administration (MOA) for state programs. The MOA is a state-level document that reflects the Employment Development Department’s (EDD) commitment to nondiscrimination and equal opportunity. It outlines the activities required to comply with the provisions of JTPA and Title 29 CFR Part 34. The provisions of the MOA apply to California Job Service, Unemployment Insurance, and JTPA programs.

The MOA contains nine distinct sections or parts. This directive outlines these sections and highlights compliance requirements that are significant to SDAs and subgrantees of the WtW 15 Percent grant funds:

1. Designation of Equal Opportunity (EO) Officer

Each recipient, other than a small recipient or service provider, must designate an EO Officer who is responsible for coordinating its obligations under these regulations. The SDA or subgrantee will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of the JTPA and Title 29 CFR Section 34.22.

The EO Officer’s responsibilities include:

- Informing employees and participants of their rights and responsibilities;
- Hearing, answering, and advising individuals regarding complaints of discrimination; and
- Explaining to SDA or subgrantee employees or participants how the equal opportunity complaint system operates.

The EO Officer’s name must be publicized at the local level through a variety of means including posters, handouts, and listings in local directories.

Periodic training is recommended for the EO Officer and staff to keep abreast of equal opportunity issues. The Capacity Building Unit of the Job Training Partnership Division (JTPD) provides training on nondiscrimination and equal opportunity.

2. Communication of Equal Opportunity Policies and Procedures

Initial and continuing notice of nondiscriminatory practices (attached) and the right to file a complaint must be:

- Posted in prominent locations;
- Disseminated in internal memoranda and other written communications;
- Included in handbooks and manuals;
- Made available to each participant; and
- Included in the participant's file.

The notice shall be provided in appropriate formats to individuals with visual impairments. A record of this notice shall be documented in the participant's file.

In generally distributed publications, the recipient must indicate that the program or activity is an equal opportunity employer/program, and that auxiliary aids and services are available upon request to individuals with disabilities. This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media. Where appropriate, information and services should be provided in languages other than English.

Where materials indicate that the SDA or subgrantee may be reached by telephone, the telephone number of any Telecommunications Device for the Deaf (TDD) or relay service used by the SDA or subgrantee must be indicated. If the SDA or subgrantee does not have a TDD, the California Relay Service (CRS) (1-800/735-2922) is an alternative. The CRS relays messages to deaf persons via the telephone. A caller can contact the CRS by voice or TDD, and an operator will contact the party to be called using voice or TDD. A TDD or relay service should be available where services provided by telephone are a major function of the program or activity.

Each recipient's EO Officer is responsible for the adoption and publication of procedures pursuant to Title 29 CFR Section 34.42, Adoption of Discrimination Complaint Processing Procedures, and for ensuring that such procedures are followed.

Complainants alleging discrimination must be informed that they have 180 days from the alleged violation to file a complaint. They may file their complaint with the recipient's EO Officer (or the person designated for this purpose), or directly with the DCR, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210.

If the complainant elects to file a complaint with the recipient (SDA, PIC, subgrantee, etc.), the complainant must be informed that he or she must wait until the recipient issues a decision or until 60 days have passed, whichever is sooner, before filing with the DCR. If the recipient has not provided the complainant with a written decision within 60 days of filing the complaint, the complainant must be notified that he or she need not wait for a decision to be issued, but that he or she may file his or

her complaint with DCR within 30 days. If the complainant is dissatisfied with the recipient's resolution of the complaint, he or she must be informed that he or she may file a complaint with DCR, and that complaint must be filed within 30 days of the date the complainant received notice of the recipient's proposed resolution.

The Equal Employment Opportunity Office and JTPD require a copy of the complaint. Please mail one copy to each of the following addresses:

***Chief
Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P.O. Box 826880
Sacramento, CA 94280-0001***

***Policy Unit Manager
Job Training Partnership Division
Employment Development Department
800 Capitol Mall, MIC 69
P.O. Box 826880
Sacramento, CA 94280-0001***

3. Equal Opportunity Provisions and Nondiscrimination Assurances in Contracts, Plans, and Agreements

A system must be implemented to ensure that all contracts, plans, and agreements contain the nondiscrimination assurances as specified. The nondiscrimination assurances must state that the SDA or subgrantee will "comply fully with the nondiscrimination and equal opportunity provisions" and acknowledge the government's rights to seek judicial enforcement of the nondiscrimination assurance.

This section requires that each application for federal financial assistance include certain nondiscrimination assurances in the form and manner provided in Title 29 CFR Section 34.20. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or the Department of Labor prior to and as a condition of receiving federal financial assistance (including both new and continuing assistance).

4. Equitable Services Among Substantial Segments of the Population

The SDAs or subgrantees can assure equitable services among substantial segments of the population by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially eligible applicants in the entire locale;
- Creating an outreach and recruitment plan that will reach eligible persons who will most benefit from services;
- Considering a pool of individuals for participation that include members of both sexes, various race/ethnicity/age groups, and individuals with disabilities;
- Establishing a hiring process that is accessible to qualified applicants with disabilities; and
- Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

5. Program and Site Access to Individuals with Disabilities

The SDAs or subgrantees must ensure the accessibility of their training programs and services for all individuals. This includes employment tests or other selection criteria used by SDAs or subgrantees that do not screen out individuals with disabilities, and training programs accessible to the visual, hearing, and speech impaired. The SDAs or subgrantees must provide means for individuals with disabilities to receive information about the availability of facilities accessible to them. Additionally, SDAs or subgrantees must provide auxiliary aids and services and reasonable accommodation to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

The SDAs or subgrantees must also provide:

- Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel);
- Signage at a primary entrance to each of its inaccessible facilities directing users to a location at which they can obtain information about accessible facilities;
- The international symbol for accessibility at each primary entrance of an accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information/public counter areas;
- Facility elevators that are accessible from the entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone;
- Accessible meeting rooms;
- Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the individual with disability after the door is closed; and
- Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

Title 29 CFR Section 34.6, Communications With Individuals With Disabilities, states: "In those circumstances where a recipient believes that the proposed action would fundamentally alter the program, activity, or service, or would result in undue financial and administrative burdens, such recipient has the burden of proving that compliance with this section would result in such alteration or burdens."

6. Data Collection, Recordkeeping, and Reporting

In compliance with Section 167 of JTPA, SDAs and subgrantees must:

- Collect data on race/ethnicity, sex, age, and, where known, disability status of each applicant, eligible applicant, participant, terminee, applicant for employment, and employee;
- Safeguard the confidentiality of the required information (Confidential information should only be used for recordkeeping and reporting purposes; determining eligibility, where appropriate; and for determining if the SDA or subgrantee is operating its WtW program in a nondiscriminatory manner.);
- ***Notify the DCR of any administrative enforcement actions or lawsuits filed against an SDA or subgrantee alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, or participation in the WtW program. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by DCR;***
- Retain records, including records of complaints, for a period of not less than three years from the close of the applicable year or resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

7. Monitoring

In accordance with Title 20 CFR Sections 627.475 and 645.245, the Compliance Review Division (CRD) of the EDD Program Review Branch monitors SDAs and subgrantees for compliance with WtW provisions and related regulations.

The CRD requires that, each year, approximately one-half of the SDAs complete and submit to the Division a Nondiscrimination and Equal Opportunity Self-Evaluation. The CRD will review the self-evaluations and use the results, along with other equal opportunity-related data, in determining which SDAs will be monitored on-site during a given program year. Although the CRD does not require the subgrantees to complete a Nondiscrimination and Equal Opportunity Self-Evaluation, all SDAs and subgrantees are encouraged to conduct self-evaluations annually. Through self-evaluations, SDAs and subgrantees can identify the compliance status of their programs and areas in which they need technical assistance. The CRD's Nondiscrimination and Equal Opportunity Self-Evaluation Guide is located on the JTPD web page at <http://www.edd.ca.gov/jtparimg.htm>.

The JTPA Directive D98-19 provides guidance and requirements for the SDAs' monitoring of their JTPA subrecipients. ***During one of the required monitoring visits, the SDA must monitor for compliance with nondiscrimination and equal opportunity requirements. Subgrantees of the WtW 15 Percent grant funds are required to monitor their subrecipients for compliance with nondiscrimination and equal opportunity requirements at least once a year.***

8. Discrimination Complaint Processing

In compliance with nondiscrimination and equal opportunity provisions, the EO Officer must:

- Adopt and publish procedures for resolving allegations within the SDA or subgrantee of noncompliance with applicable nondiscrimination/equal opportunity provisions;
- Adopt and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination/equal opportunity provisions (NOTE: Although the SDA or subgrantee does not have the same contractual jurisdiction with vendors as with subrecipients, ***the SDA or subgrantee shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the SDA or subgrantee should continue to utilize the services of the vendor.***); and
- Establish a system to record discrimination complaints.

The complaint processing procedures should specify the following:

- a. Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions may file a written complaint or a representative may file the complaint on his or her behalf.
- b. The complaint may be filed either with the recipient or with the DCR.
- c. A complaint filed pursuant to this part must be filed within 180 days of the alleged discrimination. The DCR, for good cause shown, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with the DCR. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of the DCR and does not create a defense for the respondent.
- d. Complaints should be filed in writing and shall:
 - Be signed by the complainant or his or her representative;
 - Contain the complainant's name, address, or other means of contacting him or her;
 - Identify the respondent; and
 - Describe the complainant's allegation in sufficient detail to allow the DCR, SDA, or subgrantee as applicable, to determine whether (1) the DCR, SDA, or subgrantee has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions.
- e. Both the complainant and the respondent have the right to be represented by an attorney or other individual of their own choice.

f. Complaints filed with the SDA or Subgrantee:

- (1) The SDA or subgrantee shall be allowed 60 days to respond. If during the 60-day period the resolution is not acceptable to the complainant, the complainant or his or her representative may file a complaint with the DCR within 30 days after the SDA or subgrantee notifies the complainant of the proposed resolution. The above information must be explained to the complainant at the time the resolution is offered.
- (2) If the 60 days expire and the complainant does not receive a resolution from the SDA or subgrantee, or the SDA or subgrantee does not notify the complainant, the complainant or his or her representative may, within 30 days of the expiration of the 60-day period, file a complaint with the DCR.
- (3) The DCR may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 34.43, or for other good cause shown.
- (4) The SDA or subgrantee shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of the WtW program. The notification must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the DCR within 30 days of receipt of the notification.

g. Actions by DCR:

- (1) The DCR determines acceptance of a complaint filed pursuant to Title 29 CFR Section 34.43. When DCR accepts a complaint for investigation, it shall:
 - Notify the SDA or subgrantee and the complainant of the acceptance of the complaint for investigation; and
 - Advise the SDA or subgrantee and complainant on the issues over which the DCR has accepted jurisdiction.
- (2) The SDA, subgrantee, the complainant, or a representative may contact the DCR for information regarding the complaint filed.
- (3) When a complaint contains insufficient information, the DCR will seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been used to locate him or her, or the information is not furnished within 15 days of the receipt of such request, the complaint file may be closed without prejudice upon notice sent to the complainant's last known address.

- (4) The DCR may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done anywhere in the United States, at any designated time or place.
- (5) Where the DCR lacks jurisdiction over a complaint, the DCR shall:
 - Advise the complainant, indicating why the complaint is not covered by the nondiscrimination and equal opportunity provisions outlined in JTPA or Title 29 CFR Section 34.43; and
 - Refer the complainant to the appropriate federal, state, or local authority, when possible.
- (6) The DCR will contact the complainant when a claim is not to be investigated and explain the basis for that determination.
- (7) The DCR will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).
- (8) If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., the DCR shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation procedures for joint complaints at Title 29 CFR Part 1691. The DCR will advise the complainant, SDA, and the subgrantee of the referral.
- (9) At the conclusion of the investigation, the DCR shall determine if there is reasonable cause to believe a violation of the nondiscrimination and equal opportunity provisions occurred.
- (10) After making such a cause finding, the DCR shall issue an Initial Determination. The Initial Determination shall notify the complainant and the SDA or subgrantee, in writing, of:
 - Specific findings of the investigation;
 - Proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
 - Whether it will be necessary for the SDA or subgrantee to enter into a written agreement; and
 - The opportunity to participate in voluntary compliance negotiations.
- (11) Where a no cause determination is made, the complainant and the SDA or subgrantee shall be notified in writing. Such determination represents final agency action of the Department.

9. Corrective Actions/Sanctions for Discrimination

Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 34.40, 34.41, or 34.43, respectively, shall include the steps and the specific time period it will take the SDA or subgrantee to achieve voluntary compliance. (See Section 34.44 for corrective action steps.)

Monetary corrective action may **not** be paid from federal funds.

If the SDA or subgrantee receives a finding of noncompliance, the following sections of Title 29 CFR may be referred to for detailed information:

- Final Determination, Section 34.46
- Notice of Finding of Noncompliance, Section 34.47
- Notification of Breach of Conciliation Agreement, Section 34.48
- Subpart E-Federal Procedures for Effecting Compliance
- General, Section 34.50
- Hearings, Section 34.51
- Decision and Post-Termination Proceedings, Section 34.52
- Suspension, termination, denial or discontinuing of federal financial assistance under JTPA; alternate funds disbursement procedure, Section 34.53

ACTION:

Bring this directive to the attention of affected staff or service providers.

INQUIRIES:

Please direct inquiries about this directive to your program manager at (916) 654-7799 or Georganne Pintar Baldwin, Policy Unit Manager, at (916) 654-7611.

/S/ BILL BURKE
Assistant Deputy Director

Attachment

EQUAL OPPORTUNITY IS THE LAW

This recipient is prohibited from discriminating on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in programs funded under the Welfare-to-Work (WtW), in admission or access to, opportunity or treatment in, or employment in the administration of or in connection with, the WtW program or activity. If you think that you have been subjected to discrimination under a WtW-funded program or activity, you may file a complaint within 180 days from the date of the alleged violation with the recipient's Equal Opportunity Officer (or the person designated for this purpose), or you may file a complaint directly with the Directorate of Civil Rights (DCR), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, DC 20210. If you elect to file your complaint with the recipient, you must wait until the recipient issues a decision or until 60 days have passed, whichever is sooner, before filing with DCR (see address above). If the recipient has not provided you with a written decision within 60 days of the filing of the complaint, you need not wait for a decision to be issued, but may file a complaint with DCR within 30 days of the expiration of the 60-day period. If you are dissatisfied with the recipient's resolution of your complaint, you may file a complaint with DCR. Such complaint must be filed within 30 days of the date you received notice of the recipient's proposed resolution.